

May 30, 1996

Mr. Fritz Wagener, Chief
Water Quality Standards Section
United States Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

RE: EPA Region IV Draft Antidegradation Guidance

Dear Mr. Wagener:

The Kentucky Chamber of Commerce has participated in the formulation of water quality standards policy in Kentucky for more than 20 years. The Kentucky Chamber was recently heavily involved in a year-long series of stakeholder meetings conducted by the Kentucky NREPC Division of Water regarding antidegradation implementation policies. Accordingly, the Kentucky Chamber was very interested in the recent distribution by EPA Regional IV of draft guidance for state implementation of Tier II antidegradation policies. The following comments regarding the draft guidance are submitted for your consideration by the Kentucky Chamber on behalf of its 3,000 members including industrial, commercial, and municipal wastewater dischargers.

GENERAL COMMENTS

The Kentucky Chamber has serious reservations as to the timing of the issuance of the draft regional guidance and as to the legal effect of its issuance.

Although state water quality standards have included antidegradation policies for approximately two decades, EPA has not issued nationally applicable procedures for the implementation of such policies. Since compliance with antidegradation procedures can effectively delay or preclude the issuance of permits for new and expanded discharges, states have been reluctant to implement antidegradation procedures that could have the effect of directing economic development to other states that have not adopted similar procedures. This is a particularly serious concern in Kentucky which is bordered by and competes for industrial development with six other states in three other EPA regions in addition to EPA Region IV. The issuance by EPA Region IV of its draft guidance would, unfortunately, tend to place Kentucky at a competitive disadvantage in comparison to surrounding states in EPA Regions III, V, and VII that would not be subject to similar requirements.

The timing of the issuance of EPA Region IV guidance also appears to be highly questionable. EPA headquarters recently announced its intent to revamp its entire water

quality standards program in the immediate future including the establishment of antidegradation procedures. States, such as Kentucky, could be forced to alter their antidegradation implementation procedures in response to EPA Region IV guidance only to find that different procedures were necessary in order to comply with the revisions to the water quality standards regulations resulting from the recently announced national review. In view of such imminent action at the national level, the issuance by EPA Region IV of regional guidance appears to be unwarranted and potentially disruptive.

The Kentucky Chamber does not believe that EPA Region IV has legal authority for the issuance of regional guidance that can serve as a basis for review of state antidegradation implementation procedures. The Clean Water Act vests rulemaking authority on such issues in the EPA Administrator and, in the absence of delegations of authority that have not been made, EPA regional offices are without authority to add to or detract from policies established at the national level. Because of the importance of this issue to economic development in the respective states, including Kentucky, the Kentucky Chamber strongly urges EPA Region IV to solicit input from the affected public prior to the issuance of any final guidance by which state program submissions are to be judged. As a matter of fundamental fairness, the Kentucky Chamber believes that if any such guidance is issued, it should only be applied prospectively to state program submissions made after issuance of the final guidance.

SPECIFIC COMMENTS

Although the draft guidance contains references to the desirability for states to focus their limited resources where they result in the greatest environmental protection, the draft guidance pushes states to apply antidegradation review on a parameter-by-parameter basis. The parameter-by-parameter approach is not required by the Clean Water Act and ignores the basis purpose of the Act which is to maintain the "integrity" of the nation's waters.

Under the parameter-by-parameter approach, a water body would be viewed as high quality and worthy of special procedural protection if it had a single parameter that was better than established criteria. This would be the result even if all other parameters violated applicable criteria and the water body failed to attain any applicable use designation. Efforts to maintain individual parameters at levels exceeding applicable criteria do not tend to maintain "integrity" of the waters of the United States if attainment of the applicable uses that the criteria were adopted to protect are precluded by violations of other criteria that are critical to such use. In other words, integrity of waters must be based upon the totality of environmental conditions of the water body and not upon the separate evaluation of individual water quality parameters.

The parameter-by-parameter approach suggested by the draft guidance document is clearly not mandated by the Clean Water Act or by water quality policies formulated by EPA at the national level. In promulgating its final Great Lakes Water Quality Guidance on March 23, 1995, at 60 Fed. Reg. 15366, EPA required use of the parameter-by-parameter approach only for a very limited category of pollutants and emphasized that the policy was restricted to the unique environmental circumstances of the Great Lakes region.

Furthermore, the Great Lakes Critical Programs Act of 1990, from which the Great Lakes Water Quality Guidance is derived, does not provide authority for the EPA to apply the Guidance to anything outside the Great Lakes Basin. The draft contains extensive reference to the Guidance for which there is not statutory authority or mandate for Region IV to implement through this draft or any other document.

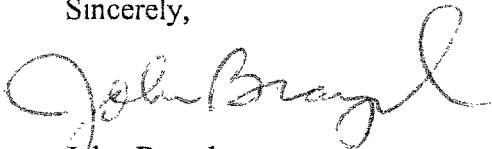
The Kentucky Chamber has similar concerns regarding the draft guidance document's discussion of the "significance" of degradation. The draft document suggests that significant degradation be evaluated on a parameter-by-parameter basis. This suggestion assumes that the integrity of a water body and the "significance" of its degradation is based upon levels of individual water quality parameters and changes in levels of individual parameters from new or expanded discharges. In fact, the integrity of a water body and the significance of changes must be evaluated on a holistic basis and changes in individual water quality parameters may be irrelevant to maintenance of integrity of the waters. The emerging use of whole effluent toxicity impacts are being approached from a biological rather than a chemical/physical perspective. Similarly, antidegradation should be approached from a holistic basis rather than a parameter-by-parameter approach.

In regard to the issue of "necessary lowering of water quality", the Kentucky Chamber is of the opinion that "necessity" and "important social or economic activity" are part and parcel of a single issue rather than separate issues. In other words, the issue of necessity should not be determined in the abstract (i.e., are there alternatives) but rather should be determined as it relates to accommodation of important economic or social development. An evaluation of alternatives without regard to the accommodation of important economic or social development would distort the intended effect of 40 CFR 131.12(a) (2).

The Kentucky Chamber believes that EPA Region IV, in its consideration of antidegradation policy, should consider the extent to which existing water quality programs, including water quality based effluent limitations and whole effluent toxicity, presently protect streams and limit degradation of instream water quality. The effectiveness of such programs tends to minimize the need for implementation of new antidegradation implementation procedures.

The Kentucky Chamber welcomes the opportunity to submit its views regarding these important issues and requests your consideration of its comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Brazel", with a stylized, flowing script.

John Brazel
Manager of Public Affairs

/bns